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No. 454

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, *Petitioners*,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONERS

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The petition for certiorari in this case presents two questions: first, whether the Hobbs Act, 18 U.S.C. § 1951, covers attempts to secure genuine employment; second, whether this statute requires a specific intent to rob or extort. The government has seriously distorted the first of these questions. Petitioners' reply brief is limited to the clarification of this issue.

Whether the Hobbs Act interdicts attempts to achieve the status of a bona fide employee through coercive methods is an unsettled and crucial question. The government, however, has distorted this legal issue into a factual issue. Its brief states that the first question presented by the petition is whether the courts below "properly found the evidence sufficient to support the verdict" (Br. Opp. 2). The Solicitor General goes on to say that petitioners "argue that the evidence is insufficient because it does not show that the services of swampers could not have been performed" (Br. Opp. 13). It is obviously for this reason that the government's brief devotes nine and a half pages to a statement of the facts and only one and a half pages to argument on the first question presented by the petition.

These petitioners, however, are conversant with the considerations which govern the grant of certiorari. They do not suggest that this Court should grant certiorari to review the sufficiency of the evidence. The Solicitor General has completely misconceived the thrust of petitioners' position. They ask only that this Court determine the applicability of the Hobbs Act to the facts established by the evidence.

Concededly the evidence shows that the employment of swampers was customary in cases of this character. Concededly also the evidence shows that other contractors working on the very project in question had employed swampers. The evidence does not support the government's assertion that there was no genuine work for swampers on this particular job. In any event, however, that issue was not submitted to the jury. The jury was instructed to convict if the

services of swampers were unwanted, superfluous, fictitious, *or* unnecessary. The Court of Appeals affirmed because it found that swampers were unwanted and unnecessary. Of course, this amounted to a directed verdict of guilty, because petitioners admitted that the complaining contractors did not *want* to employ swampers, and petitioners further admitted that swampers were not *necessary* because the operators could perform the same services.

What petitioners did contend was that they were attempting to secure genuine employment for union members, *i.e.*, an opportunity to work for a wage. That issue was never submitted to the jury, obviously because both of the courts below recognized that this case did not involve fictitious services. Neither the jury nor the Court of Appeals found that petitioners sought to compel the payment of wages for services which were not to be performed. Neither the jury nor the Court of Appeals found that there was no genuine work for swampers on this particular job. It is thus too late for the Solicitor General to suggest that the evidence would have supported such a finding.

The important issue raised by this case cannot be avoided by suggesting that "unnecessary" and "fictitious" are synonymous. In some cases, it might be true that the terms are interchangeable, and a finding that services are "unnecessary" might be sufficient for conviction. This is never true, however, in cases such as the case at bar, which involve jurisdictional disputes. In these cases, the members of neither union are "necessary," because the work can be performed by members of the other union. The

true test in such cases is whether the members of one union are seeking wages in return for "fictitious" services, *i.e.*, services which are never performed at all.

The record reveals that this test was not applied by either of the courts below. Both the jury and the Court of Appeals found only that the complaining contractors wanted to operate and could operate without the services of swampers. They did not go on to find that the swampers, if employed, would not have done a customary day's work for a customary day's wage.

Finally, the Solicitor General suggests that petitioners are attempting to reargue the prior decision of this Court herein. *United States* v. *Green*, 350 U.S. 415. To support this suggestion, the government's brief quotes a single sentence from the prior opinion. When read in context, however, this isolated sentence was clearly never intended to resolve the issue raised by this case. This Court was concerned only with the sufficiency of the indictment, which was framed in the language of the statute. The trial judge arrested judgment because the indictment made it plain that petitioners were not seeking to obtain property for their own benefit. This Court reversed, on the ground that the statute did not require personal profit to the defendant. No other issues were raised or considered.

Even the government does not deny that the question upon which petitioners seek review is a question of grave importance. Its significance is foreshadowed by the three dissenting opinions in *United States* v. *Kemble*, 198 F.2d 889, cert. denied, 344 U.S. 893. Despite the fact that the *Kemble* petition did

not adequately present the issue raised by this case, moreover, Mr. Justice Douglas dissented from the denial of certiorari. As pointed out at p. 17 of the petition herein, this issue is far more important today than when *Kemble* was decided, because the courts have since held that economic coercion is sufficient to constitute "force, violence, or fear" under the Hobbs Act. The significance of these decisions is discussed at pp. 15-16 of the petition. Their effect was predicted by Judge Staley, dissenting, in the *Kemble* case, 198 F.2d 889-890:

> "Any strike to obtain higher wages constitutes a use of force to obtain the property of another. Suppose an additional object of such a strike is to force the employer to bargain with a union when another labor organization has already been certified as the representative of the employees, thus rendering the strike an unfair labor practice . . . . Or suppose the strike is in violation of a collective bargaining agreement. These are both examples of strikes which are unlawful, at least in a certain sense. Both might reasonably be termed attempts to obtain the property of another by the wrongful use of force. If such strikes should affect interstate commerce, we would have complete offenses under the Hobbs Act.
>
> "I do not think that Congress intended such far-reaching effects under the Hobbs Act."

The government's brief is completely silent concerning these decisions. It merely suggests that the record does not present any legal issue and that the legal issue sought to be raised was settled by this Court's prior decision herein. Since both of these contentions are contrary to fact, the Solicitor General has not advanced any valid reason why this Court

should not resolve the applicability of the Hobbs Act to attempts to secure genuine employment by physical or economic coercion.

For the foregoing reasons, petitioners urge that the petition for a writ of certiorari should be granted.

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